

ESTTA Tracking number: **ESTTA327990**

Filing date: **01/21/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	MTD-USA, LLC		
Entity	Corporation	Citizenship	South Carolina
Address	155 Hall Street Spartanburg, SC 29302 UNITED STATES		
Attorney information	Timothy D. St. Clair Turner Padget Graham & Laney, P. A. 200 East Broad Street Suite 250 Greenville, SC 29601 UNITED STATES tstclair@turnerpadget.com Phone:864/552-4642		

Applicant Information

Application No	79055386	Publication date	12/22/2009
Opposition Filing Date	01/21/2010	Opposition Period Ends	01/21/2010
International Registration No.	0968478	International Registration Date	06/10/2008
Applicant	Milan Tadic Breg 22a SI-2322 Majsperk SLOVENIA		

Goods/Services Affected by Opposition

Class 037.

All goods and services in the class are opposed, namely: Building construction services; repair of buildings; installation services, namely, installation of electrical systems, appliances and windows, building demolition, building sealing, construction information, building construction supervision, installation and repair of irrigation devices, boiler cleaning and repair, pipeline construction and maintenance, factory construction, varnishing, floor sanding, drilling of wells, shipbuilding, rebuilding machines that have been worn or partially destroyed and rebuilding of automobile engines, underwater construction and repair, riveting

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Other	15 U.S.C. 1052(d)

Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	MTD		
Goods/Services	INSTALLATION SERVICES		

Attachments	386 Opposition.pdf (8 pages)(66750 bytes)
-------------	--

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Timothy D. St. Clair/
Name	Timothy D. St. Clair
Date	01/21/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MTD-USA, LLC,

Opposer,

v.

Milan Tadic,

Applicant.

Opposition No.

NOTICE OF OPPOSITION

Trademark Trial and Appeal Board
Commissioner for Trademarks
P. O. Box 1451
Alexandria, VA 22313-1451

MTD-USA, LLC, a South Carolina corporation having an address of 155 Hall Street, Spartanburg, South Carolina 29302 (“Opposer”), believes it will be damaged by the registration of the mark “MTD” from U. S. application Serial No. 79055386 filed on June 10, 2008 by Milan Tadic (“Applicant”), and hereby opposes same.

A description of Applicant’s application is as follows:

Mark:



(“Applicant’s Mark”)

Serial No.: 79055386

Filed: June 10, 2008

Goods/Services:

Common metals and their alloys including stainless steel; metal building materials, namely, soffits and fascia; transportable buildings of metal; metal tracks for rail vehicles; non-electric cables and wires of common metal; ironmongery, namely, sponge iron, metal gutter pipes, metal branching pipes, metal fittings for compressed air ducts, metal reinforcing materials for machine belts, metal tubing, iron binding strips used on packaging, metal bindings used on packaging, metal bands for tying up, steel binding strips used on packaging, common metal ingots, metal fittings for building, namely, metal hose fittings, metal joinery fittings, metal pipe fittings; metal building materials, namely composite panels composed primarily of metal; metal building boards, metal containers for compressed gas or liquid air, metal containers for storing acids, metal fluid storage tanks, metal container closures, steel sheets and plates, metal mooring buoys, metal bolts, metal vats, metal roofing, metal manhole covers, metal floating docks for mooring boats; non-electrical wire of common metal alloys except fuse wire, wire rope, metal ropes, unwrought or semi-wrought iron, metal loading pallets, anti-friction metal, metal poles; metal safes; goods of common metal, namely, figurines of common metal and boxes of common metals, metal storage and transport containers, metal floating containers, metal drainpipes, metal penstock pipes, metal paint spraying booths, metal casks, metal barrels, metal building frameworks, metal latticework, non-electric bars of metal railings cables; non-electric metal cable joints, metal air conditioning and ventilating ducts, metal pipe work, metal water pipes. metal barrels, metal girders, metal partitions, metal shims, manually operated metal drain trap valves, metal water pipe manual valves, metal chain couplings for fire hoses, metal pipe junctions, metal pipeline manifolds; ores, namely, iron ores, nickel ores and tin ores

AND

Machines, namely, machine flywheels and lapping machines, filling machines, catalytic converters, industrial air suction machines, clothes white washing machines, fleshing machines, grain separators, acetylene cleaning apparatus, namely, centrifugal separators for the cleaning of acetylene, metal drawing machines, bending machines for metalworking, sheet metal printing machines, floating or non-floating drilling rigs, grinding machines, machine joints for connecting sliding strips, plates and guides, compressed

air machines, compressed air pumps, engine fuel injectors, electric generators, steam and oil separators, dust removing installations for cleaning purposes, pulp oil refining machines, painting machines, dip-dyeing machines, paint spray guns, paint air brushes, conveyor belts, milling machines, air suction machines, compressed gas blowing machines, namely, gas operated cutting torches; motor and engine crankcases, current generators, hydraulic smoothing presses, ditchers, namely, plows; machine forging moulds, hydraulic machine hammers, elevators, multi-purpose high pressure washers, steam engine boilers, namely, steam pressure variation engines; super charger engines not for land vehicles, compressors for machines, air condensers, cranes, refrigerator compressors, clutches for machines other than for land vehicles, shaft coupling for machines, handling apparatus for loading and unloading; hoists, air condensers, engine boiler fittings, machine wheels, metal working machines, mixing machines, riveting machines, namely, rivet guns; die-stamping machines, blanking presses, steam rolling machines for rolling metals, pumps as parts of machines, motors and engines; pneumatic tube conveyors, air suction machines, boat engines, lubricating pumps, milling cutters, gas-operated soldering machines, electric welding machines, mining sifters, sorters machines, lace making machines, power-operated garden hose reels, air-operated power tools, namely, grinders. vacuum cleaners, turbines, biodiesel-generation machines, namely, superheaters; vacuum pumps, motor and engine fans, machine valves as machine components; wagon lifts, heat exchangers being parts of machines, cutting machines and machine tools, namely, rotary dies for cutting boxes for packaging industry and vices for use in precision clamping of work pieces, forge bellows, powered loading ramps to move luggage on to airplanes, roller bridges, machine stands, machine axles, pneumatic hammers, rolling mill cylinders, vehicle washing installations, high-pressure pumps for washing appliances and installations, machine tools, namely, jaws for use in the precision clamping of work pieces; central vacuum cleaning installations; motors and engines except for land vehicles; machine coupling and transmission components except for land vehicles; incubators for eggs

AND

Hand tools and hand operated implements, namely, hand operated food dicers and hand operated lifting jacks, leather strops, hand tool bits, hand tool borers bits, manual breast drills, electric caulking irons, pin punches, hand foundry ladles, tire levers, reamer socket sets, nail punches, hand tube cutters, hand rammers, chisels,

hand-operating jacks, pliers; cutlery, namely, knives and saws; side arms, not including firearms, namely, hunting knives and swords; razors

AND

Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; blank magnetic data carriers, blank record discs; automatic vending machines, cash registers, calculators, data processing equipment and computers; fire-extinguishing apparatus

AND

Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, namely, flare stacks for use in oil industry, sinks, sewage purification installations, automatic ash conveyor installations, bath installations and fittings, bath water heaters, ventilation hoods, electric autoclaves, steam generating installations, steam heating boilers, water distillation refining towers, pressure water purification tanks, electrochemical gas generator installations, gas furnace boilers, gas scrubber apparatus, boiler pipes and tubes for heating installations, hydrants, processing installations for fuel and nuclear moderating material, air cooling appliances and installations, copper furnaces, drying apparatus and installations, namely, clothes drying machines, water cooling installations, electric kettles

AND

Land vehicles; apparatus for locomotion by land, air or water, namely, cars, airplanes, boats, funicular railcars, railway rolling stock for funicular railways, cable cars, motor vehicle chassis, wagons

AND

Non-metallic building materials, namely, concrete building blocks, timber, plaster, mortar, non-metallic shingles, roofing tiles, timber beams, wood paneling boards, bricks, non-metallic gutter pipes, non-metallic branching pipes, masonry tanks for liquid storage, non-metallic refractory construction materials, non-metallic paint spraying booths, non-metallic chimney pots, non-metallic chimney cowls, non-metallic floating docks for boats, non-metallic caissons

for underwater construction work, non-metallic silos, non-metallic gates, non-metallic beams, non-metallic building frames, non-metallic nonmetal partitions; non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; non-metal monuments, namely, monuments of stone, concrete or marble

AND

Advertising; business management; business administration; office functions

AND

Building construction services; repair of buildings; installation services, namely, installation of electrical systems, appliances and windows, building demolition, building sealing, construction information, building construction supervision, installation and repair of irrigation devices, boiler cleaning and repair, pipeline construction and maintenance, factory construction, varnishing, floor sanding, drilling of wells, shipbuilding, rebuilding machines that have been worn or partially destroyed and rebuilding of automobile engines, underwater construction and repair, riveting

AND

Transport of goods; packaging and storage of goods, namely, precision machine tools; travel arrangements, namely, travel booking agencies

AND

Treatment of materials, namely, the addition of polymer additives, radio opacifiers, and antimicrobial agents to materials to render them ecogenic, radiopaque or bacteriostatic and affixing and embedding product authentication security devices and materials in a wide variety of products and documents to protect against counterfeiting, tampering, and diversion, and to ensure the integrity of genuine products and documents; burnishing by abrasion, mill working, galvanizing, metal tempering, coppersmithing, soldering, air purification and deodorizing, filtration of coolants through magnet separation, providing material treatment information, metal plating, metal casting, burnishing by abrasion, oil refining, flour milling, grinding, blacksmithing, chrome plating, gilding, nickel plating, silver plating, tin plating, vulcanization, and custom material assembly of products for others

As grounds of opposition, it is alleged that:

1. Opposer is an experienced and expert provider of installation services, such as conveying systems, in the United States.
2. Opposer has provided such services under its name, "MTD-USA, LLC," since at least 2006 and prior to Applicant's filing of the subject application for registration.
3. "MTD-USA" ("Opposer's Mark") is a coined term that has as its principal meaning a service mark identifying the source of Opposer's services.
4. Applicant's Mark is essentially the same as and is confusingly similar to Opposer's Mark in the prominent portion of each mark.
5. Applicant's Mark and Opposer's Mark are substantially identical in appearance and create a close phonetic and visual similarity encouraging mistake and resulting in confusing similarity.
6. Upon information and belief, there was no bona fide use by Applicant of Applicant's Mark in the United States commerce prior to the filing of the subject application.
7. Upon information and belief, there was no bona fide intention by Applicant to use Applicant's Mark at the time of the filing of the subject application.
8. Upon information and belief, there has never been bona fide use by Applicant of Applicant's Mark in the United States as a trademark for the vast array of goods and services listed by Applicant in the subject application.

9. Upon information and belief, there has never been a bona fide intention by Applicant to use Applicant's Mark for the vast array of goods and services listed by Applicant in the subject application.

10. Upon information and belief, at least some of Opposer's customers and future customers use at least some of the vast array of goods and services listed by Applicant in the subject application.

11. Upon information and belief, were Applicant to offer the goods and services listed in the subject application, they would be offered in the same or similar channels of commerce and offered to similar customers as are the services of Opposer.

12. In view of the similarity of Opposer's Mark and Applicant's Mark and the identical and similar goods/services of the respective parties, Applicant's Mark so resembles Opposer's Mark as to be likely to cause confusion, mistake, or deception when used on or in connection with the goods and services identified by Applicant in the subject application.

13. Based on the foregoing, if Applicant is permitted to register Applicant's Mark, Applicant's corresponding *prima facie* exclusive right to use its mark in nationwide commerce will conflict with Opposer's lawful and superior right to use Opposer's Mark.

14. Opposer relies on its common law trademark rights in Opposer's Mark, acquired in the United States and not abandoned. In view of Opposer's prior rights in Opposer's Mark, Applicant is not entitled to registration of

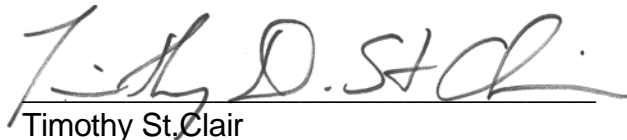
Applicant's Mark pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

15. Opposer believes that it would be damaged by the registration of Applicant's Mark.

WHEREFORE, Opposer prays that Application Serial No. 79055386 be rejected and stricken, that no registration issue thereon to Applicant, and that this opposition be sustained in favor of Opposer.

TURNER, PADGET, GRAHAM & LANEY, P.A.

January 21, 2010

A handwritten signature in dark ink, appearing to read "T. St. Clair", written over a horizontal line.

Timothy St. Clair
P. O. Box 1509
Greenville, SC 29602
864-552-4600
Attorney for Opposer